

BUDGET RESPONSIBILITY AND NATIONAL AUDIT ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Schedule 3: Relationship between NAO and Comptroller and Auditor General

180. *Schedule 3* contains provisions that govern the relationship between the NAO and the C&AG. These include:
- the preparation by the NAO and the C&AG of a national audit strategy;
 - the obligation of the NAO to provide resources for the carrying out of the C&AG's functions;
 - the need for the C&AG to obtain the approval of the NAO to perform certain services;
 - the NAO's duty to monitor (and power to provide advice to) the C&AG;
 - the ability of the C&AG to delegate functions;
 - the arrangements for dealing with vacancy in office or the incapacity of the C&AG;
 - powers to charge fees;
 - the obligation to prepare an annual report; and
 - the preparation and contents of a code of practice to deal with the relationship between the C&AG and the NAO.

Paragraph 1: Strategy

181. *Paragraph 1* provides for the preparation and approval of a strategy for the exercise of the national audit functions. The strategy will serve as the business plan for the NAO and the C&AG. Under *sub-paragraph (1)*, the NAO and C&AG must jointly prepare a strategy for the national audit functions. Those functions consist of the NAO's functions and those of the C&AG. The strategy must be reviewed and (if appropriate) revised at least once every 12 months.
182. *Sub-paragraph (2)* provides that the strategy is to include a plan for the use of resources. In particular, for each financial year covered by the strategy, it must specify a maximum amount of resources which the NAO is to provide to the C&AG.
183. *Sub-paragraphs (3) to (6)* require the strategy to be approved by the Public Accounts Commission. The process for achieving that is for the NAO chair and the C&AG jointly to submit the strategy to the Commission. Before approving the strategy, the Commission must review it and may modify it. In doing so, the Public Accounts Commission must have regard to any advice given by the Treasury.

184. *Sub-paragraph (7)* requires the NAO and the C&AG each to carry out the strategy.

Paragraph 2: NAO to provide resources for the Comptroller and Auditor General's functions

185. *Paragraph 2* gives the NAO a duty to provide the resources to the C&AG that that C&AG requires to carry out the functions of the office. A maximum level of resources will be agreed by the NAO and the C&AG, and approved by the Public Accounts Commission, under *paragraph 1(2) of Schedule 3*. The resources that are thus available for the C&AG's functions fall into two categories:

- those whose allocation is at the discretion of the C&AG; and
- those for services which require the NAO's approval.

186. For the activities that are set out in *paragraph 3(2) of Schedule 3*, the C&AG will determine the level of resources that are required without needing approval from NAO. In such cases, the NAO must provide the resources that the C&AG asks for. These functions are mainly those which the C&AG is given by statute, including services as Comptroller of the issue of public funds, as auditor of government departments and many other public bodies, and in the exercise of powers under Part 2 of the National Audit Act 1983 to carry out value for money examinations. The C&AG will be bound by the maximum resource provision set out in the strategy (under *paragraph 1(2) of Schedule 3*) and by the resources voted by Parliament to NAO for the year under *section 23*. Subject to that, the C&AG's independence will be guaranteed by giving the C&AG the final say in setting the resources required for these functions.

187. For other activities, including audit and consultancy services provided by agreement, for example to international bodies and other countries, the C&AG will require the NAO's approval before providing such services. For these "NAO-approved" services, the NAO (not the C&AG) will be responsible for setting the maximum resource provision, under *paragraph 3(3) of Schedule 3*. The NAO must work within the maximum limit set by the strategy and the annual provision voted by Parliament.

188. *Sub-paragraph (2)* gives the NAO responsibility in particular for:

- employing staff to assist in carrying out the C&AG's functions;
- buying in services to support the functions;
- holding information; and
- keeping records.

189. *Sub-paragraph (3)* limits the maximum amount of resources that the C&AG may require under *sub-paragraph (1)* in any financial year to the maximum amount set out in the strategy for that year.

Paragraph 3: Provision of certain services by Comptroller and Auditor General to require NAO's approval

190. *Paragraph 3* provides for the C&AG to seek the approval of the NAO before providing certain services. These "NAO-approved services" are services other than those set out in *sub-paragraph (2)*.

191. *Sub-paragraph (3)* explains that the NAO is to set a maximum amount of resources for the "NAO-approved services". In respect of NAO-approved services, then, the C&AG's ability to provide and resource these services is subject to the need for prior approval by the NAO board, and to the level of resource agreed by NAO.

Paragraphs 4 and 5: NAO to monitor and provide advice

192. *Paragraph 4* imposes a duty on the NAO to monitor the carrying out of the C&AG's functions. The NAO's monitoring function can be expected to provide it with the information it needs as a precursor to discharging its duty under *paragraph 5* to provide advice to the C&AG.
193. Under *paragraph 5* the NAO may provide such advice as it considers appropriate to the C&AG about the exercise of the C&AG's functions. The C&AG must have regard to any advice given by the NAO.

Paragraph 6: Delegation of Comptroller and Auditor General's functions

194. *Paragraph 6* provides that the C&AG may prepare a scheme for the delegation of the functions of that office to NAO employees. The scheme and any revisions of it must be approved by the Commission. If the Commission approves the scheme, the C&AG may delegate functions in accordance with it. A delegation does not prevent the C&AG from doing anything personally.

Paragraph 7: Comptroller and Auditor General: Vacancy or incapacity

195. *Paragraph 7* makes provision for the C&AG's functions to be carried out by a duly authorised employee of NAO on a temporary basis if the office is vacant or the C&AG is incapable.
196. In the case of incapacity, before NAO can authorise an employee to carry out the C&AG's functions, a certificate from the Speaker of the House of Commons is required. Under *sub-paragraph (2)(a)*, the Speaker may certify that in the Speaker's view the current C&AG's ability to carry out that office's functions is seriously impaired because of ill health. The period of ill health starts when the Speaker certifies to the House that the C&AG is impaired and ends when the Speaker certifies to the House that the C&AG is able to carry out the office's functions.
197. NAO must obtain the Commission's agreement before authorising an employee to carry out the C&AG's functions. The temporary arrangement may last no more than six months (see *sub-paragraph (6)*) and is available only once during a C&AG's term of appointment. For longer vacancies and periods of incapacities, or for repeated incapacity, therefore, the expectation is that the gap would be filled by a new appointment.

Paragraph 8: Audit fees etc

198. *Paragraph 8(1) to (4)* authorises the NAO to charge fees for audits carried out by the C&AG in accordance with a scheme prepared by the NAO and approved by the Commission. The agreement of a Minister of the Crown is required if the accounts to be audited are those of a body or other person who acts on behalf of the Crown. *Sub-paragraph (5)* provides that those arrangements do not apply to audits that are carried out as part of NAO-approved services. In such cases, the C&AG may charge fees and other amounts but only in accordance with the relevant agreement or arrangement. The fee powers in this paragraph may be used to recover the costs of providing the services in question but not to cross-subsidise other costs of the NAO or the C&AG.
199. *Sub-paragraphs (6) and (7)* require that fees and other amounts received by the C&AG must be paid to the NAO and that the NAO must pay them into the Consolidated Fund.

Paragraph 9: Reports

200. *Paragraph 9* provides that the NAO and the C&AG must, as soon as practicable after the end of each financial year, jointly prepare a report on the carrying out of the functions of the NAO and of the C&AG. This annual report must be submitted to the Commission

jointly by the chair of the NAO and the C&AG. The Commission must lay the report before Parliament.

Paragraphs 10 to 12: Code of practice

201. *Paragraphs 10 to 12* provide for the preparation, approval and content of a code of practice which is to set out the relationship between the NAO and the C&AG. The code will allow detailed arrangements for the operation of the new NAO and its relationship with the C&AG to be set in a flexible and transparent manner. The code will not be a source of further powers for either; rather it will seek to give practical effect to the provisions of Part 2 of the Act. It is intended to be a practical way of setting out how the powers are to be used in practice, and may be adjusted from time to time to reflect the evolving requirements of NAO's business and the C&AG's priorities.
202. *Paragraph 10* provides that the NAO and C&AG must jointly prepare a code of practice dealing with the relationship between the NAO and the C&AG. The code is required to reflect the principle enunciated in *section 17(1) and (2)* of this Act that, subject to any other statutory provision, the C&AG has complete discretion in carrying out the C&AG's functions.
203. Once it has been prepared, the code must be reviewed regularly by the NAO and C&AG and revised as appropriate. In preparing and revising the code, they must consult the Treasury. They must also consider any proposals for revision made by the Commission.
204. The code requires the approval of the Commission. The chair of the NAO and C&AG are jointly to submit the code or any revision to the Commission. If the Commission approves the code, it must lay it before Parliament.
205. *Sub-paragraph (9)* requires the NAO and the C&AG to comply with the code.
206. *Paragraph 11* provides that the code must be approved by the NAO at a meeting of NAO. Approval can only be given if at least one-half of the non-executive members present and voting vote in favour.
207. *Paragraph 12* sets out a non-exhaustive list of what is to be covered by the code.
208. *Sub-paragraph (1)* provides that the code must include:
 - provision as to how the strategy is to be prepared, reviewed and revised, and the matters and the periods it should cover;
 - provision as to how resources are to be provided for the C&AG's functions under *paragraph 2(1) of Schedule 3*;
 - provision about the preparation of estimates for NAO resources under *section 23*;
 - provision about the way in which the NAO makes decisions on approving and setting resources for NAO-approved services under *paragraph 3 of Schedule 3*;
 - provision as to how the NAO monitors the C&AG's functions under *paragraph 4 of Schedule 3*;
 - provision as to how advice is to be given by the NAO for the purposes of *paragraph 5 of Schedule 3*;
 - provision as to the way in which the C&AG's charges fees under *paragraph 8 of Schedule 3*; and
 - provision about the extent of the delegation of NAO's functions to the C&AG under *paragraph 23 of Schedule 2*.
209. The code must also place restrictions on the public comments that a NAO non-executive member may make in relation to the carrying out of the C&AG's functions.

These notes refer to the Budget Responsibility and National Audit Act 2011 (c.4) which received Royal Assent on 22 March 2011

210. *Sub-paragraph (2)* sets out some other matters that may be dealt with in the code. These are:
- the way in which the annual reports required by *paragraph 9* are to be prepared;
 - the matters about which the NAO and/or the C&AG are to consult the Commission from time to time; and
 - any standards of corporate governance.

Paragraph 13: Documents and information

211. *Paragraph 13* provides a general power for the NAO to receive information on behalf of, and from, the C&AG. By virtue of *sub-paragraph (2)*, information held by NAO on behalf of the C&AG will be treated as being held by NAO for the purposes of section 3(2) of the Freedom of Information Act 2000. This means NAO will be responsible for discharging obligations under that Act both for itself and for the C&AG.